

STATE OF MICHIGAN
COURT OF APPEALS

KHARY LIDDELL,

Plaintiff-Appellant,

v

WAYNE COUNTY RECORDS KEEPER,

Defendant-Appellee.

UNPUBLISHED

January 13, 2011

No. 295220

Wayne Circuit Court

LC No. 06-635746-CZ

Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Plaintiff, acting in propria persona, filed this action to compel disclosure of various records pursuant to the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* The trial court dismissed plaintiff's complaint in January 2008. In a prior appeal, this Court affirmed the trial court's decision in part, but remanded for further proceedings to determine whether requested personnel files and incident reports were exempted from disclosure under MCL 15.243(1)(a), (b)(iii), and (s)(ix). *Liddell v Wayne Co Records Keeper*, unpublished opinion per curiam of the Court of Appeals, issued July 21, 2009 (Docket No. 283839), slip op at 4-5. On remand, the parties appeared for a settlement conference at which defendant agreed to provide redacted copies of the personnel files of the two officers who had arrested plaintiff. The trial court determined that disclosure of those records resolved the case and again dismissed it. Plaintiff, acting in propria persona, appeals as of right. We affirm in part and remand for further proceedings.¹

Plaintiff contends that the trial court erred by failing to compel defendant to provide certain documents or prove to his satisfaction that the requested documents did not exist. This issue was resolved against plaintiff in the prior appeal. That holding is the law of the case and

¹ There is no merit to defendant's claim that this Court lacks jurisdiction over this appeal. Defendant's claim is based on the erroneous understanding that plaintiff's claim of appeal was filed on November 24, 2009, more than 21 days after entry of the trial court's November 2, 2009 order of dismissal. Plaintiff's claim of appeal was filed on November 19, 2009, not November 24, 2009. Therefore, the appeal was timely filed under MCR 7.204(A)(1).

cannot be decided differently in this appeal. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

Plaintiff also contends that the trial court erred when it failed to determine whether other documents were exempt from disclosure before denying his request for the documents. We agree. In *Liddell*, unpub op at 1, 4-5, this Court remanded this case for a determination whether the personnel files of six named officers and whether “written incident reports by the named deputies over the previous four years for assaulting, resisting, and obstructing” were exempt from disclosure, in whole or in part, under the exemptions cited by defendant. When a case is remanded, the lower court is obligated “to comply strictly with the mandate of the appellate court.” *Rodriguez v Gen Motors Corp (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994). The trial court “may not take action that is inconsistent with the appellate court’s remand order.” *In re TM (After Remand)*, 245 Mich App 181, 191; 628 NW2d 570 (2001).

Here, the trial court misinterpreted this Court’s order of remand as pertaining only to the personnel files of two officers and dismissed the action because defendant had agreed to provide redacted copies of those files. The trial court failed to determine whether the personnel files of the other officers and whether all of the officers’ incident reports were exempt from disclosure as directed by this Court. Further, while a settlement agreement between the parties would relieve the trial court of having to resolve that issue, nothing in the record indicates that the trial court’s decision was the product of a settlement agreement. The trial court’s statement on the record indicated that the parties had discussed the matter in chambers and that defendant had agreed to provide redacted copies of two officers’ personnel files, but there is no written settlement agreement signed by plaintiff and nothing in the statements placed on the record indicate that plaintiff agreed to accept only those records and forgo his claims to the personnel records of the other four officers or to the six officers’ incident reports. MCR 2.507(G). Accordingly, as this Court previously directed in *Liddell*, unpub op at 5, “we remand to the trial court so that it may specifically find if the requested personnel files or incident reports, or particular information they contain, are exempted from disclosure for particular reasons. It may then enter an appropriate order encompassing those findings.”

Affirmed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello